C49 10/21/97

October 16, 1997

Ms. Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
401 14th Street, SW, Room 420
Washington, DC 20227

Dear Ms. Johnson:

McAuley Institute is a national, nonprofit housing organization that is dedicated to the development of safe, decent and affordable housing for low income families, the empowerment of local residents and the restoration of the nation's least served communities. Through McAuley's services, community-based groups gain the tools they need to foster sustainable neighborhood revitalization. Part of McAuley's mission is to extend financial resources to those who need it most.

As a certified community development financial institution, McAuley Institute applauds the creation of innovative products to meet the financial needs of under-served communities. Yet, the proposed electronic funds transfer (EFT) provision may not truly meet its legislative intent to better serve low income people. Section 31001 (x) of the Debt Collection Improvement Act [hereinafter "the Act"] amends 31 U.S.C. 3332 to require federal agencies to make all payments, other than those under the Internal Revenue Code, electronically after January 1, 1999. This letter emphasizes the detrimental effect of EFT on low income people who do not wish to conduct financial business with vendor institutions designated by the federal government.

General Costs to Recipients of EFT

Through EFT, the Treasury Department "seeks to bring into the mainstream of the financial system those millions of Americans who receive Federal payments and who currently do not use the financial system to receive funds, make payments, save, borrow or invest." (31 CFR Part 208 48713, 48714). Under the Act, the Treasury Department's Financial Management Service will open electronic transfer accounts (ETAs) for recipients without bank accounts. EFT will lower costs by reducing the number of paper checks that are lost, stolen or damaged in transit. Electronic payments are less expensive than the cost of writing paper checks and mailing them to recipients. Additionally, EFT payments are less susceptible to fraud through forgery and alteration. (*See* 31 CFR Part 208 @ 48714-48715).

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While these efforts in cost-savings and expansion of services are commendable, they unwittingly burden recipients who do not have bank accounts. About 10 million Americans do not have bank accounts. Many of these are low income people. They have chosen against opening bank accounts for personal reasons or because doing so is a hardship. These 10 million, unbanked recipients will not only be forced to conduct business with financial institutions, they will have to bear the costs of opening an ETA. Under these circumstances, the Act "significantly increas[es] participation by recipients in the country's financial system" without fully considering the needs and cost burdens of 10 million American families. (31 CFR Part 208 @ 48714).

Definition of "Authorized Payment Agent"

Section 208.2(b) of the Act does not define "authorized payment agent," the entity to which EFTs will be made on behalf of the recipient. The Act notes that, presently, the Treasury Department "cannot deliver a Federal payment by EFT directly to an entity other than a financial institution." (31 CFR Part 208 @ 48716). It seems, however, to leave open the door regarding payments made to an individual or entity other than the recipient in the case of "recipients who are physically or mentally incapable of managing their payments." (31 CFR Part 208 @ 48716).

If the Financial Management Service allows check cashers and other non-financial institutions to qualify as authorized payment agents, physically and mentally challenged people – those, according to the Act, served best by non-financial institutions – will be vulnerable to deceit. Non-financial entities are not subject to federal consumer protection or federal oversight laws. They may charge excessive service fees and/or otherwise abuse their authorized payment agent status to the detriment of recipients who are forced to rely on non-financial institutions to receive their payments.

Scope of Waiver

Section 208.4 of the Act authorizes the Secretary of the Treasury Department to waive the EFT requirement for people "for whom compliance imposes a hardship." (31 CFR Part 208 @ 48717). Hardship for individuals is not thoroughly defined, though the legislative history points to geographical or physical barriers without defining these terms. (*See* 31 CFR Part 208 @ 48717). The Treasury Department adds financial obstacles as another condition for waiver. The legislative history also mentions mental, educational and language difficulties; but the Treasury Department disregards these circumstances claiming that:

1. "These factors can affect an individual's ability to use any method of payment, whether check or EFT..." (31 CFR Part 208 @ 48718). Yet, a person with mental, educational and/or language problems is just as likely as a person with geographical, physical and/or financial hardships to have trouble with both the EFT and check methods of payment.

2. "...[T]he safety and reliability associated with EFT outweigh the difficulty associated with a new method of payment." (31 CFR Part 208 @ 48718). A person with mental, educational and/or language problems is just as likely as a person with geographical, physical and/or financial hardships to find that the safety and reliability of EFT does not outweigh the difficulty associated with changing from check to EFT.

3. "With regard specifically to mental disabilities,[...] an individual or entity may be appointed or otherwise selected to act on behalf of an individual entitled to a Federal payment." (31 CFR Part 208 @ 48718). Being forced to find a representative payee who can understand the new EFT system as well as the check system may be more difficult for a person with mental disabilities than it is for a person with geographical, physical and/or financial hardships.

4. The obstacles posed by literacy or language skills are not "uniquely associated with the use of EFT." (31 CFR Part 208 @ 48718). The use of new technological systems is difficult for people who do not have literacy or language barriers, let alone for those who suffer from such difficulties.

Based on the Treasury Department's above arguments against extending hardship waivers to recipients with mental, educational and/or language problems, the distinction between eligible hardships and non-eligible hardships is arbitrary. A person with mental, educational and/or language problems should not be forced to use EFT because his/her hardship is not considered as dire as a geographical, physical and/or financial hardship under the Treasury Department's review.

The Treasury Department does not meet its goal of "making certain that recipients have access to their funds at a reasonable cost." (31 CFR Part 208 @ 48714). In its efforts to streamline and better serve its clients, the Treasury Department should ensure that its clients are not forced to use methods that are burdensome. If the conversion from paper checks to EFT is inevitable, the Treasury Department should:

1. Assist with the costs of establishing ETAs for those presently without bank accounts;
2. Implement safeguards and regulations to protect vulnerable clients from vendors that may take advantage of them under the new system and
3. Expand hardship waivers to those with mental, educational and/or language barriers.

Thank you in advance for your review of the foregoing concepts. I look forward to learning about the Treasury Department's next iteration of the proposed EFT rule.

Sincerely,

Josephine Ann Kane

Josephine Ann Kane
Executive Director